

1 MORGAN, LEWIS & BOCKIUS LLP
Michael D. Weil, Bar No. 209056
2 michael.weil@morganlewis.com
J.P. Schreiber, Bar No. 317829
3 One Market
Spear Street Tower
4 San Francisco, CA 94105-1596
Tel: +1.415.442.1000
5 Fax: +1.415.442.1001

6 MORGAN, LEWIS & BOCKIUS LLP
Jennifer B. Zargarof, Bar No. 204382
7 jennifer.zargarof@morganlewis.com
Anahi Cruz, Bar No. 324326
8 anahi.cruz@morganlewis.com
300 South Grand Avenue
9 Twenty-Second Floor
Los Angeles, CA 90071-3132
10 Tel: +1.213.612.2500
Fax: +1.213.612.2501

11 Attorneys for Defendants,
12 THE ELEVANCE COMPANIES, INC.
(f.k.a. The Anthem Companies, Inc.);
13 ELEVANCE HEALTH, INC.; and THE
ELEVANCE HEALTH COMPANIES OF
14 CALIFORNIA, INC.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA
17

18 KIKISHIA BURRUS, an individual,
19
20 Plaintiff,

21 v.

22 THE ANTHEM COMPANIES, INC.,
an Indiana corporation; ELEVANCE
HEALTH, INC., an Indiana
23 corporation; THE ELEVANCE
HEALTH COMPANIES OF
24 CALIFORNIA, INC., a California
corporation; and DOES 1 through 50,
25 inclusive,

26 Defendants.
27
28

Case No. 2:22-CV-06901-SB-KS

**STIPULATED PROTECTIVE
ORDER**

Action Filed: Aug. 22, 2022

1 **I. PURPOSES AND LIMITATIONS**

2 A. Discovery in this action is likely to involve production of confidential,
3 proprietary, or private information for which special protection from public
4 disclosure and from use for any purpose other than prosecuting this litigation
5 may be warranted. Accordingly, the parties hereby stipulate to and petition
6 the Court to enter the following Stipulated Protective Order. The parties
7 acknowledge that this Order does not confer blanket protections on all
8 disclosures or responses to discovery and that the protection it affords from
9 public disclosure and use extends only to the limited information or items
10 that are entitled to confidential treatment under the applicable legal
11 principles. The parties further acknowledge, as set forth in Section XIII(C),
12 below, that this Stipulated Protective Order does not entitle them to file
13 confidential information under seal; Civil Local Rule 79-5 sets forth the
14 procedures that must be followed and the standards that will be applied when
15 a party seeks permission from the Court to file material under seal.

16 **II. GOOD CAUSE STATEMENT**

17 A. This action is likely to involve trade secrets, confidential company
18 policies, and other valuable research, development, commercial, financial,
19 technical and/or proprietary information for which special protection from
20 public disclosure and from use for any purpose other than prosecution of this
21 action is warranted. Such confidential and proprietary materials and
22 information consist of, among other things, confidential business or financial
23 information, information regarding confidential business practices, or other
24 confidential research, development, or commercial information (including
25 information implicating privacy rights of third parties), information
26 otherwise generally unavailable to the public, or which may be privileged or
27 otherwise protected from disclosure under state or federal statutes, court
28 rules, case decisions, or common law. Accordingly, to expedite the flow of

information, to facilitate the prompt resolution of disputes over confidentiality of discovery materials, to adequately protect information the parties are entitled to keep confidential, to ensure that the parties are permitted reasonable necessary uses of such material in preparation for and in the conduct of trial, to address their handling at the end of the litigation, and serve the ends of justice, a protective order for such information is justified in this matter. It is the intent of the parties that information will not be designated as confidential for tactical reasons and that nothing be so designated without a good faith belief that it has been maintained in a confidential, non-public manner, and there is good cause why it should not be part of the public record of this case.

III. DEFINITIONS

A. Action: This pending federal lawsuit.

B. Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

C. “CONFIDENTIAL” Information or Items: Information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), and as specified above in the Good Cause Statement.

D. Counsel: Outside Counsel of Record and House Counsel (as well as their support staff).

E. Designating Party: A Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as “CONFIDENTIAL.”

F. Disclosure or Discovery Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this

1 matter.

2 G. Expert: A person with specialized knowledge or experience in a
3 matter pertinent to the litigation who has been retained by a Party or its
4 counsel to serve as an expert witness or as a consultant in this Action.

5 H. House Counsel: Attorneys who are employees of a party to this
6 Action. House Counsel does not include Outside Counsel of Record or any
7 other outside counsel.

8 I. Non-Party: Any natural person, partnership, corporation, association,
9 or other legal entity not named as a Party to this action.

10 J. Outside Counsel of Record: Attorneys who are not employees of a
11 party to this Action but are retained to represent or advise a party to this
12 Action and have appeared in this Action on behalf of that party or are
13 affiliated with a law firm which has appeared on behalf of that party, and
14 includes support staff.

15 K. Party: Any party to this Action, including all of its officers, directors,
16 employees, consultants, retained experts, and Outside Counsel of Record
17 (and their support staffs).

18 L. Producing Party: A Party or Non-Party that produces Disclosure or
19 Discovery Material in this Action.

20 M. Professional Vendors: Persons or entities that provide litigation
21 support services (e.g., photocopying, videotaping, translating, preparing
22 exhibits or demonstrations, and organizing, storing, or retrieving data in any
23 form or medium) and their employees and subcontractors.

24 N. Protected Material: Any Disclosure or Discovery Material that is
25 designated as "CONFIDENTIAL."

26 O. Receiving Party: A Party that receives Disclosure or Discovery
27 Material from a Producing Party.

1 **IV. SCOPE**

2 A. The protections conferred by this Stipulation and Order cover not only
 3 Protected Material (as defined above), but also (1) any information copied or
 4 extracted from Protected Material; (2) all copies, excerpts, summaries, or
 5 compilations of Protected Material; and (3) any testimony, conversations, or
 6 presentations by Parties or their Counsel that might reveal Protected
 7 Material.

8 B. Any use of Protected Material at trial shall be governed by the
 9 orders of the trial judge. This Order does not govern the use of Protected
 10 Material at trial.

11 **V. DURATION**

12 A. Once a case proceeds to trial, all of the information that was
 13 designated as confidential or maintained pursuant to this Protective Order
 14 becomes public and will be presumptively available to all members of the
 15 public, including the press, unless compelling reasons supported by specific
 16 factual findings to proceed otherwise are made to the trial judge in advance
 17 of the trial. See Kamakana v. City and County of Honolulu, 447 F.3d 1172,
 18 1180-81 (9th Cir. 2006) (distinguishing “good cause” showing for sealing
 19 documents produced in discovery from “compelling reasons” standard when
 20 merits-related documents are part of court record). Accordingly, the terms of
 21 this Protective Order do not extend beyond the commencement of the trial.

22 **VI. DESIGNATING PROTECTED MATERIAL**

23 A. Exercise of Restraint and Care in Designating Material for Protection

24 1. Each Party or Non-Party that designates information or items for
 25 protection under this Order must take care to limit any such
 26 designation to specific material that qualifies under the appropriate
 27 standards. The Designating Party must designate for protection only
 28 those parts of material, documents, items, or oral or written

1 communications that qualify so that other portions of the material,
2 documents, items, or communications for which protection is not
3 warranted are not swept unjustifiably within the ambit of this Order.

4 2. Mass, indiscriminate, or routinized designations are prohibited.
5 Designations that are shown to be clearly unjustified or that have been
6 made for an improper purpose (e.g., to unnecessarily encumber the
7 case development process or to impose unnecessary expenses and
8 burdens on other parties) may expose the Designating Party to
9 sanctions.

10 3. If it comes to a Designating Party's attention that information or
11 items that it designated for protection do not qualify for protection,
12 that Designating Party must promptly notify all other Parties that it is
13 withdrawing the inapplicable designation.

14 B. Manner and Timing of Designations

15 1. Except as otherwise provided in this Order (*see, e.g.*, Section
16 B(2)(b) below), or as otherwise stipulated or ordered, Disclosure or
17 Discovery Material that qualifies for protection under this Order must
18 be clearly so designated before the material is disclosed or produced.

19 2. Designation in conformity with this Order requires the
20 following:

21 a. For information in documentary form (e.g., paper or
22 electronic documents, but excluding transcripts of depositions or
23 other pretrial or trial proceedings), that the Producing Party affix
24 at a minimum, the legend "CONFIDENTIAL" (hereinafter
25 "CONFIDENTIAL legend"), to each page that contains
26 protected material. If only a portion or portions of the material
27 on a page qualifies for protection, the Producing Party also must
28 clearly identify the protected portion(s) (e.g., by making

1 appropriate markings in the margins).

2 b. A Party or Non-Party that makes original documents
3 available for inspection need not designate them for protection
4 until after the inspecting Party has indicated which documents it
5 would like copied and produced. During the inspection and
6 before the designation, all of the material made available for
7 inspection shall be deemed “CONFIDENTIAL.” After the
8 inspecting Party has identified the documents it wants copied
9 and produced, the Producing Party must determine which
10 documents, or portions thereof, qualify for protection under this
11 Order. Then, before producing the specified documents, the
12 Producing Party must affix the “CONFIDENTIAL legend” to
13 each page that contains Protected Material. If only a portion or
14 portions of the material on a page qualifies for protection, the
15 Producing Party also must clearly identify the protected
16 portion(s) (e.g., by making appropriate markings in the
17 margins).

18 c. For testimony given in depositions, that the Designating
19 Party identify the Disclosure or Discovery Material on the
20 record, before the close of the deposition all protected
21 testimony.

22 d. For information produced in form other than document
23 and for any other tangible items, that the Producing Party affix
24 in a prominent place on the exterior of the container or
25 containers in which the information is stored the legend
26 “CONFIDENTIAL.” If only a portion or portions of the
27 information warrants protection, the Producing Party, to the
28 extent practicable, shall identify the protected portion(s).

1 C. Inadvertent Failure to Designate

2 1. If timely corrected, an inadvertent failure to designate qualified
 3 information or items does not, standing alone, waive the Designating
 4 Party's right to secure protection under this Order for such material.
 5 Upon timely correction of a designation, the Receiving Party must
 6 make reasonable efforts to assure that the material is treated in
 7 accordance with the provisions of this Order.

8 **VII. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

9 A. Timing of Challenges

10 1. Any party or Non-Party may challenge a designation of
 11 confidentiality at any time that is consistent with the Court's
 12 Scheduling Order.

13 B. Meet and Confer

14 1. The Challenging Party shall initiate the dispute resolution
 15 process under Local Rule 37.1 *et seq.*

16 C. The burden of persuasion in any such challenge proceeding shall be on
 17 the Designating Party. Frivolous challenges, and those made for an improper
 18 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
 19 parties) may expose the Challenging Party to sanctions. Unless the
 20 Designating Party has waived or withdrawn the confidentiality designation,
 21 all parties shall continue to afford the material in question the level of
 22 protection to which it is entitled under the Producing Party's designation
 23 until the Court rules on the challenge.

24 **VIII. ACCESS TO AND USE OF PROTECTED MATERIAL**

25 A. Basic Principles

26 1. A Receiving Party may use Protected Material that is disclosed
 27 or produced by another Party or by a Non-Party in connection with this
 28 Action only for prosecuting, defending, or attempting to settle this

1 Action. Such Protected Material may be disclosed only to the
2 categories of persons and under the conditions described in this Order.
3 When the Action has been terminated, a Receiving Party must comply
4 with the provisions of Section XIV below.

5 2. Protected Material must be stored and maintained by a
6 Receiving Party at a location and in a secure manner that ensures that
7 access is limited to the persons authorized under this Order.

8 B. Disclosure of “CONFIDENTIAL” Information or Items

9 1. Unless otherwise ordered by the Court or permitted in writing
10 by the Designating Party, a Receiving Party may disclose any
11 information or item designated “CONFIDENTIAL” only to:

12 a. The Receiving Party’s Outside Counsel of Record in this
13 Action, as well as employees of said Outside Counsel of Record
14 to whom it is reasonably necessary to disclose the information
15 for this Action;

16 b. The officers, directors, and employees (including House
17 Counsel) of the Receiving Party to whom disclosure is
18 reasonably necessary for this Action;

19 c. Experts (as defined in this Order) of the Receiving Party
20 to whom disclosure is reasonably necessary for this Action and
21 who have signed the “Acknowledgment and Agreement to Be
22 Bound” (Exhibit A);

23 d. The Court and its personnel;

24 e. Court reporters and their staff;

25 f. Professional jury or trial consultants, mock jurors, and
26 Professional Vendors to whom disclosure is reasonably
27 necessary for this Action and who have signed the
28 “Acknowledgment and Agreement to be Bound” attached as

Exhibit A hereto;

g. The author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

h. During their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (i) the deposing party requests that the witness sign the “Acknowledgment and Agreement to Be Bound;” and (ii) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound,” unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

i. Any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

IX. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

A. If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

1. Promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;
2. Promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material

covered by the subpoena or order is subject to this Protective Order.

Such notification shall include a copy of this Stipulated Protective Order; and

3. Cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

B. If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as “CONFIDENTIAL” before a determination by the Court from which the subpoena or order issued, unless the Party has obtained the Designating Party’s permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this Action to disobey a lawful directive from another court.

X. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

A. The terms of this Order are applicable to information produced by a Non-Party in this Action and designated as “CONFIDENTIAL.” Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

B. In the event that a Party is required, by a valid discovery request, to produce a Non-Party’s confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party’s confidential information, then the Party shall:

1. Promptly notify in writing the Requesting Party and the Non-

1 Party that some or all of the information requested is subject to a
 2 confidentiality agreement with a Non-Party;

3 2. Promptly provide the Non-Party with a copy of the Stipulated
 4 Protective Order in this Action, the relevant discovery request(s), and a
 5 reasonably specific description of the information requested; and

6 3. Make the information requested available for inspection by the
 7 Non-Party, if requested.

8 C. If the Non-Party fails to seek a protective order from this court within
 9 14 days of receiving the notice and accompanying information, the Receiving
 10 Party may produce the Non-Party's confidential information responsive to
 11 the discovery request. If the Non-Party timely seeks a protective order, the
 12 Receiving Party shall not produce any information in its possession or
 13 control that is subject to the confidentiality agreement with the Non-Party
 14 before a determination by the court. Absent a court order to the contrary, the
 15 Non-Party shall bear the burden and expense of seeking protection in this
 16 court of its Protected Material.

17 **XI. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

18 A. If a Receiving Party learns that, by inadvertence or otherwise, it has
 19 disclosed Protected Material to any person or in any circumstance not
 20 authorized under this Stipulated Protective Order, the Receiving Party must
 21 immediately (1) notify in writing the Designating Party of the unauthorized
 22 disclosures, (2) use its best efforts to retrieve all unauthorized copies of the
 23 Protected Material, (3) inform the person or persons to whom unauthorized
 24 disclosures were made of all the terms of this Order, and (4) request such
 25 person or persons to execute the "Acknowledgment and Agreement to be
 26 Bound" that is attached hereto as Exhibit A.

XII. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

A. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the Stipulated Protective Order submitted to the Court.

XIII. MISCELLANEOUS

A. Right to Further Relief

1. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

B. Right to Assert Other Objections

1. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

C. Filing Protected Material

1. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the

1 specific Protected Material at issue. If a Party's request to file
2 Protected Material under seal is denied by the Court, then the
3 Receiving Party may file the information in the public record unless
4 otherwise instructed by the Court.

5 **XIV. FINAL DISPOSITION**

6 A. After the final disposition of this Action, as defined in Section V,
7 within sixty (60) days of a written request by the Designating Party, each
8 Receiving Party must return all Protected Material to the Producing Party or
9 destroy such material. As used in this subdivision, "all Protected Material"
10 includes all copies, abstracts, compilations, summaries, and any other format
11 reproducing or capturing any of the Protected Material. Whether the
12 Protected Material is returned or destroyed, the Receiving Party must submit
13 a written certification to the Producing Party (and, if not the same person or
14 entity, to the Designating Party) by the 60 day deadline that (1) identifies (by
15 category, where appropriate) all the Protected Material that was returned or
16 destroyed and (2) affirms that the Receiving Party has not retained any
17 copies, abstracts, compilations, summaries or any other format reproducing
18 or capturing any of the Protected Material. Notwithstanding this provision,
19 Counsel are entitled to retain an archival copy of all pleadings, motion
20 papers, trial, deposition, and hearing transcripts, legal memoranda,
21 correspondence, deposition and trial exhibits, expert reports, attorney work
22 product, and consultant and expert work product, even if such materials
23 contain Protected Material. Any such archival copies that contain or
24 constitute Protected Material remain subject to this Protective Order as set
25 forth in Section V.

26 B. Any violation of this Order may be punished by any and all
27 appropriate measures including, without limitation, contempt proceedings
28 and/or monetary sanctions.

1 **IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.**

2 Dated: June 30, 2023

SETAREH LAW GROUP

3 By /s/ Tyson Gibb

4 Shaun Setareh
5 Jose Maria D. Patino, Jr.
6 Tyson Gibb

7 Attorneys for Plaintiff
8 **KIKISHIA BURRUS**

9 Dated: June 30, 2023

MORGAN, LEWIS & BOCKIUS LLP

10 By /s/J.P. Schreiber

11 Michael D. Weil
12 Jennifer B. Zargarof
13 J.P. Schreiber
14 Anahi Cruz

15 Attorneys for Defendants
16 THE ELEVANCE COMPANIES,
17 INC. (f.k.a. The Anthem Companies,
18 Inc.); ELEVANCE HEALTH, INC.;
19 and THE ELEVANCE HEALTH
20 COMPANIES OF CALIFORNIA,
21 INC.

22 **Filer's Attestation:**

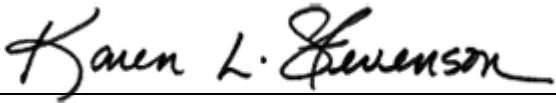
23 Pursuant to Local Rule 5-4.3.4 regarding signatures, J.P. Schreiber hereby
24 attests that concurrence in the filing of this document has been obtained from
25 Tyson Gibb.

26 /s/J.P. Schreiber

27 J.P. Schreiber

1 **FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.**
2
3

4 Dated: July 3, 2023



KAREN L. STEVENSON
CHIEF MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 _____ [print or type full address], declare under penalty of perjury that
 I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Central District of California on
 [DATE] in the case of _____ ***Burrus v. Elevance Health,***
Inc., et al., Case No. 2:22-cv-06901-SB-KS. I agree to comply with and to be
 bound by all the terms of this Stipulated Protective Order and I understand and
 acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in
 any manner any information or item that is subject to this Stipulated Protective
 Order to any person or entity except in strict compliance with the provisions of this
 Order.

I further agree to submit to the jurisdiction of the United States District
 Court for the Central District of California for the purpose of enforcing the terms of
 this Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print or
 type full name] of _____ [print or type full address and
 telephone number] as my California agent for service of process in connection with
 this action or any proceedings related to enforcement of this Stipulated Protective
 Order.

Date: _____

City and State where sworn and signed: _____

Printed Name: _____

Signature: _____